

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.91 OF 2006

Nowrosjee Wadia Maternity Hospital & Anr. ..Petitioners.
Vs.
The Asstt. Provident Fund Commissioner ..Respondent.
...
Mrs. Meena Doshi for the Petitioners.
Mr. Suresh Kumar for the Respondent.
...

CORAM : [DR.D.Y.CHANDRACHUD, J.](#)

18th January, 2007.

P.C.:

1. In these proceedings the Petitioners before the Court are (i) Nowrosjee Wadia Maternity Hospital and (ii) Bai Jarbai Wadia Hospital. The First Petitioner owes its existence to a Trust deed dated 17th July, 1926 while the Second Petitioner to a Trust deed dated 2nd April, 1928. The First Petitioner came into existence by virtue of an agreement between the then Government of Bombay, the Municipal Corporation and Mr. Wadia under which land was earmarked for offering medical services to persons working in the textile industry. The First Petitioner is administered by a board of management consisting of nine members of whom two representatives each are drawn from the Government of

Maharashtra, the Municipal Corporation and the Bombay Mill Owners Association. Three representatives are drawn from M/s. Nowrosjee Wadia and Sons Ltd. The First Petitioner has set up a case that it is a center for undergraduate and postgraduate teaching. For convenience of reference, it would be appropriate to extract the averments contained in paragraph 3 of the Writ Petition:

“The Petitioners No.1 state that it is a center for undergraduate and postgraduate teaching and research and thereby caters to the student faculty and the nursing faculty of the City. In 2001-2002, the Hospital's teaching faculty was utilized for training 479 undergraduate medical students in the subjects of Obstetrics and Gynecology from Seth G. S. Medical College, Mumbai, and Topiwalla National Medical College, Mumbai and 34 Post Graduate medical students were admitted for M. D and [D.G.O.](#) In Obstetrics and Gynecology. In the same year, the Hospital's School of Nursing gave six month's training in midwifery to 115 students, who had completed training in General Nursing. In fact, the Hospital reserves 240 beds (six units) at the instance of the Seth G. S. Medical College for the purposes of training of the medical students of the said Colleges.”

2. The Second Petitioner came to be constituted in pursuance of an agreement between the Municipal Corporation and Mr. Wadia. Four representatives are drawn from the Municipal Corporation of Greater Mumbai, in the board of management, and the remaining four are from M/s.Nowrosjee Wadia and Sons Ltd.

3. In 1971, the Central Government introduced the Employees' Family Pension Scheme. By two separate orders dated 29th December, 1976 the Central Provident Fund Commissioner granted an exemption in terms of paragraph 40 of the scheme.

4. The pay scales of the employees of the Petitioners are at par with those of the employees of the Municipal Corporation since 1948. The gratuity and leave rules have also been brought in conformity with those of the Municipal Corporation in 1951. The service rules framed with effect from 1st June, 1977 are also stated to be based on service rules applicable to Municipal employees. The employees of the Petitioners are in receipt of pensionary benefits which are stated to be on par with the pensionary benefits of Municipal employees.

5. In 1995, the Government of India promulgated the Employees' Pension Scheme. The Scheme contemplated that 8.33 % (out of the salary of Rs.6,500/-) of the employee's contribution would be earmarked for the Employees' Pension Fund

while the balance 3.76% from the employee's contribution would be deposited in the Provident Fund account of each employee. The Employees' Family Pension Scheme 1971 ceased to operate with effect from 16th November, 1995 after the new scheme of 1995. The Provident Fund authorities sought to initiate proceedings under Section 7-A against the Petitioners on the ground that the contributions under the scheme of 1995 have not been deposited after 16th November, 1995. A summons to appear was issued on 16th July, 2004. In a reply to a notice dated 12th August, 2004, the Petitioners furnished certain documents on 23rd August, 15th September, 17th September and 29th September, 2004 respectively.

6. The contention of the Petitioners was that (i) the exemption granted under the Family Pension Scheme of 1971 had not been withdrawn and (ii) the pensionary benefits available to the employees of the hospital are more beneficial than those contemplated under the Employees' Pension Scheme 1995.

7. An order was passed by the Assistant Provident Fund Commissioner on 20th May, 2005 rejecting the contentions of the

Petitioners. The Assistant Provident Fund Commissioner has held that the establishments of the Petitioners are governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the scheme framed thereunder. The Assistant Provident Fund Commissioner has held that while it was open to the Petitioners to submit an application for exemption under paragraph 39 of the Employees' Pension Scheme of 1995, no such application has been submitted. A preliminary observation has, however, been made that the pension scheme of the Petitioners is not more favourable than the Employees' Pension Scheme 1995.

8. The order dated 20th May, 2005 has been called into question in these proceedings.

9. During the course of the hearing of these proceedings two submissions have been raised. Firstly, it has been submitted that by a notification dated 19th March, 1993 issued in exercise of the powers conferred by sub section (2) of Section 16, the Central Government has exempted certain classes of establishments from the operation of the Act, subject to certain conditions. The classes of establishments include educational institutions

registered as societies under the Societies Registration Act, 1860 or as trusts under the Indian Trusts Act, 1882 and whose employees are in receipt of benefits in terms of provident fund, family pension and deposit-linked insurance at par with the schemes framed under the Act of 1952. The Petitioners claim that as a teaching hospital both for graduate and undergraduate students, their case should be decided in terms of the notification dated 19th March, 1993. On behalf of the Respondents, however, it has been urged that hitherto the case of the Petitioners was dealt with on the footing that both the First and the Second Petitioners are hospitals. The averments contained in paragraph 3 of the Petition have already been extracted in the earlier part of the judgment. The claim of the Petitioners to the benefit of the notification dated 19th March, 1993 would have to be considered by the authorities after furnishing to the Petitioners an opportunity of being heard. It would be open to the Petitioners to submit a fresh representation, relying upon such material as they seek to submit in support of their claim of being entitled to the exemption that has been granted to educational institutions in terms of the notification dated 19th March, 1993. The aforesaid notification was initially issued for a period of three years and it is needless to add that it

would be open to the authorities to consider the case of the Petitioners should the notification have been thereafter extended in operation.

10. The second issue which has been canvassed is that the Petitioners have applied for the grant of an exemption on 31st March, 2006 under paragraph 39 of the Employees' Pension Scheme 1995. The application for exemption under paragraph 39 has still not been disposed of.

11. In these circumstances, the appropriate direction to issue in the present proceedings would be to call upon the competent authorities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to initially decide upon the validity of the claim of the Petitioners to the benefit of the notification dated 19th March, 1993. In order to facilitate this exercise, the Petitioners

shall file all such material as they seek to rely upon within a period of four weeks from today. The competent authority shall

thereupon decide the question of exemption with reference to the provisions of Section 16 within a period of two months of the submission of the application. In the event that the authority comes to the conclusion that the Petitioners are not entitled to the exemption from the provisions of the Act, the authority shall then proceed to consider the claim for exemption from the Employees' Pension Scheme 1995 in terms of the provisions of paragraph 39. The aforesaid exercise shall be completed within a period six months. The decision on the aforesaid issue shall be taken without having regard to the findings contained in the impugned order dated 20th May, 2005 (Exh. D). In order to facilitate a fresh decision the impugned order is quashed and set aside without the expression of any opinion by the Court on the merits of the rival contentions of the parties. The Petition is accordingly disposed of.